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ABSTRACT

The role and function of the university attorney in relation to educational policy-making, administrative science, and institutional decision-making warrants investigation due to an increase in concern for legislation and litigation in higher education that parallels an increase in the systematic study of higher education. Through a social psychological approach, the function of the university attorney is investigated and a conceptual typology is presented that diagrams key variables (autonomy, organizational hierarchy, advocate role, counselor role) that influence the role of an attorney. Differing views of the role of the university attorney as advocate and as counselor are presented. Further research is recommended to fully understand the role of the university attorney. (BH)

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A CONCEPTUAL TYPOLOGY OF THE ROLE OF THE UNIVERSITY ATTORNEY

A Presentation

by

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INTRODUCTION

This researcher sees two parallel movements in higher education going through refinement and renewal, generating more useful information and understanding. The first of these two movements is the development of higher education as a subject of deliberate and disciplined study. The art forms and philosophical essays on administration of higher education are being balanced by more systematic and theory-based approaches. Writings dealing with organizational theory, power relationships, and administrative science are increasingly evident. The decision-making processes and intra-organizational relationships in higher education continue to be very tenuous entities, but more effort seems to be made to describe them, classify them, measure them, and manage them. Kast and Rosenzweig's (1974:561-567) study of the university as an open-system with specific integral subsystems leads them to comment on the lack of bureaucratic hierarchical structure, vestiges of the collegial relationship of shared power and decision-making being articulated. Cohen and March (1976:262-275) characterize university administration and decisional relationships as an "organized anarchy." McConnell (1976:276-291) studies shared power relationships and decision-making in the academy, and the way in which a chief executive can manage an institution with these characteristics and quirks. He says that there are certain advantages to this type of system for those who which to exploit it. Finally, Gross and Grambsch (1974:169-194) identify the adversarial relationships emerging not only within the context of "insiders" and

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"outsiders" of the institution, but also among the subgroups of the insiders. This capsule sketch is merely a representation of the refining, systematic study of higher education administration as a movement.

The parallel or adjunct movement is the concern for legislation and litigation in higher education. Indeed, a specialized body of knowledge called "college and university law" exists. Sources too numerous to cite in detail have analyzed, prescribed, prophesied, and rationalized the legal aspects of education in recent times to provide an ever-growing information pool. At least two authors (Kaplin, 1978; Hollander, 1978) have written comprehensive texts on the law of higher education.

The literature of higher education law as a movement seems to consist of three different, but closely related themes: (1) the response and reaction type of writing (Iacovara,1977:223-240), (2) the issues and trends type of writing (Glenny and Dalglish,1973:173-202), and the very specific analytical type of writing dealing with a particular or focal issue of the law (Wallack and Chamblee, 1977: 241-279).

Of interest to this researcher are the points of tangency between these two movements. There has yet to develop a specific body of knowledge regarding the administration of the college or university in the legal suprasystem, nor is there a substantial body of knowledge about the university attorney in higher education administration. The research is lacking (Maru,1972) on the university attorney; only a handful of articles have been written on the subject

(Kaplin,1978:xiii); and many questions about the roles, function, duties, and the very concept of the university attorney remain unexplored (Kaplin,1978:xi).

Statement of the Problem

Most of the existing literature on the university attorney is descriptive in nature, and few deviate in their conclusions. There is a need for the recognition that the university attorney presents a worthwhile subject for study in the matter of higher education policy-making, administrative science, and institutional decision-making. It is presumed that even speculative writing, unorthodox conceptualization, and alternative approaches to the study of the university attorney provide a broader basis for understanding the administrative, behavioral, and functional aspects of the university attorney in the university organizational setting.

Purpose of the Study

The purpose of the study is threefold. This writer attempts to encourage research into the role and function of the university attorney beyond what is available in the literature. Also, it is the intent of this paper to recognize and identify, by using a social psychological approach, the variant roles and relationships that can be generated to examine the function of the university attorney. Finally, by creating a typology of these social psychological variables of the roles and function of attorneys in organizations, one can assess the current literature findings on the university attorney in relation to a conceptual typology.

REVIEW OF THE LITERATURE

What is Known About Organizational Attorneys?

A discussion of the role and function of the attorneys in private practice, in corporations, and in government agencies is becoming more readily available in the literature. It is noted that prior to 1962, studies of organizational attorneys were almost nonexistent (Maru, 1972:9). Possibly one of the most comprehensive studies of attorneys is the literature review commissioned and published by the American Bar Foundation. It includes chapters dealing with what lawyers do, how they go about doing what they do, and career development patterns. Maru (1972:10) cites one source in this review that analyzes the role conflict experienced by the corporation counsel; specifically, "the tensions caused by their professional work because of differences between what they think they should do as lawyers and what their employers expect of them."

Others (Marks et al.,1972:4; Friedman, 1973:192-195; Green, 1975: 3-4) examine the attorney and his or her role regarding such matters as influence, values, change, and conflicts-of-interest. Attorney Green (1975:4) writes in an American Bar Association research monograph, "but he [the attorney] has to define himself in relation to society and deal with the questions of what he would like to do and what he should do. He must resolve or ignore possible conflicts between his view of the lawyer's role and the rewards that presently reflect the way law is practiced." These conflicts are operative for the attorney in the organizational setting.

In the words of Simon, Smithburg, and Thompson (1962: 515-517), attorneys in organizations are a powerful body in shaping policy because of their integral nature and expertise. They note, "His advice [the attorney] must constantly be sought, and he would be less than human if he did not go a little further in his advice than was strictly necessary to protect the agency's actions from reversals by the courts. Since his principal will rarely know how much the term 'legal' embraces, much of the extra-legal advice will be reflected in administrative decisions." Not only is this legal advice-giving a potential area of conflict with administrators, so is the matter of institutional loyalty. Simon, Smithburg, and Thompson report (1962:517) that attorneys in public organizations are often "reluctant to accept organizational decisions that do not coincide with their own notions of the proper protection of rights."

There are distinct ranges or distances at which the attorney in the organization operates with respect to autonomy. In most organizations, the independence of the attorney is somewhat restricted. In other settings, such as public interest law, this subordination may not be the case (Marks et al.,1972:4).

Possibly some of the most significant findings concerning attorneys in organizations are the disparate value systems, duties, and outlooks of lawyers who function as advocates as opposed to those who are counselors. Legal researcher Horowitz (1977: 73-75) comments that there is a fundamental difference in orientation between litigation lawyers and agency lawyers. According to Horowitz, there are significant role conflicts for the advocacy attorney within an organization. He

writes, "advocates tend to elicit something of an outsider's view of the department's business," and that they are frequently dissatisfied with "agency malevolence, incompetence, and having to defend an agency against litigants with legitimate grievances." He goes on to state that (1977:75) counselors tend to be viewed as employees, career men, more "distant from their professional socialization and the accompanying fascination with court work."

Rueschemeyer's in-depth comparative study of the American and German legal professions (1973: 23-38) leads him to conclude that the number of in-house counsel in the United States is increasing, corporate in-house counsel adopt many of the values of their employing institutions, and that most lawyers no longer think of themselves primarily as advocates nor are they considered so by the their clients. He observes that counsel work is roughly similar to working with clients in a business setting.

This brief review is significant for several reasons. In summary, it highlights that there are multiple roles for organizational attorneys, and that these roles are steeped in conflict. It is noted also that there are varying degrees of autonomy for organizational attorneys. Finally, the roles of advocate and counselor are different in values and concerns.

What is Known About University Attorneys?

Most of the limited literature there is on the university attorney is so similar that articles are nearly indistinguishable from one another. Probably the most diametrically opposed articles are the work of Lathi and Orentlicher. Lathi (1976:12-17) describes a highly defined role

for the attorney, closely monitored by the chief executive officer and trustees, with a specified position classification description. This attorney role, articulated by Lathi, is pictured in the counselor mode. Conversely, Orentlicher (1975: 511-517) questions the rationale for the recurrent concept of the attorney serving merely as an advisor to the administration. He proposes (1975:515) that the "notion that legal servicing for an academic institution relates to and includes those who directly perform or participate in its academic programs." Orentlicher's liberal perspective of the role of the university attorney alludes to role conflict for the attorney. Indeed, he writes about this prospect (1975: 517) by saying "the results and implications here, too, can depend on how the attorney perceives his role as 'college' or 'university' counsel."

Bickel's article (1974:79) becomes distinguishable only in that some mention is made of the advocacy role in preserving institutional autonomy. He continues to say "the success of university counsel in establishing this attitude on the part of the courts is important because it is a demonstration of the valuable role of counsel in minimizing the imposition of legalistic operational frameworks, whenever possible, in approaching the legal obligations of the institution to protect the rights and enforce the responsibilities of its students, faculty, and staff."

Sensenbrenner (1974:15) presents a counsel role but notes a variable structure affecting the university attorney. He writes, "counsel tend to be more independent and candid in advising the chief executive if there is no line relationship between the two."

Corbally (1974:4) refers to the counsel as "a conservative voice in the management team." Others (Beale, 1974: 5-12; Epstein, 1974:635-639; Hopkins and Roha, 1975: 24-25; Rosenblum, 1976: 83) provide standard counselor characterizations in their writings.

CONCEPTUAL TYPOLOGIES

Modeling the Organizational Attorney's Role and Function: Lytle's Typology

A thorough study of attorneys in organizations provides a fascinating insight into variables affecting their role and function. Two distinct factors that emerge are the polar roles of advocate and counselor. Many attorneys function specifically in one role by virtue of their organizational position, while certain legal positions allow the attorney to function in both at different times. Recognizing this, the variables can be represented in a linear context, forming a continuum (see FIGURE 1).

Another set of variables is related to the relative amount of autonomy provided the attorney in the organizational setting. Typically, the autonomy is measured relative to the limits, demands, and commands of the chief executive officer. The literature on the attorney's roles in organizations tend to indicate that in most organizations the attorney serves in an advisory or overhead capacity relative to the chief administrator. There are organizations, however, that allow for less circumscribed roles and positions for the attorney. In order to account for this variance in autonomy, a continuum scale is developed and termed an independence-subordination scale (see FIGURE 1).

What the observer notes in FIGURE 1 is that the scales are positioned to bisect at their medians. The bisection forms a four quadrant configuration that is used to illustrate a conceptual typology. What are the reasons for constructing such a typology? First, the typology provides a way to show the relationship between

several key operative variables that influence what attorneys do in organizations. Further, a typology serves as a means through which an observer can speculate not only on "what is" but also on "what could be."

On the matter of speculation, FIGURE 1 provides a model with four quadrants. Each quadrant is representative of distinct relationships. Although a specific set of relationships represented by one or more of the quadrants may not be common ones in most current organizational settings, it does not render those relationships invalid for purposes of academic study. The typological arrangement derived in this paper serves three specific purposes: (1) to broaden thought on the role of attorneys in organizations, (2) to provide a basis for further social psychological analysis of variable roles for attorneys, and (3) as an eventual basis for assessing the role descriptors of university attorneys from the available and future literature.

A view of FIGURE 1 reveals at least three characteristics in each of its quadrants. Each quadrant is identified numerically, starting at the upper right quadrant with TYPE I SITUATION and continuing clockwise to the upper left quadrant labeled TYPE II SITUATION which represents an interaction termed SUBORDINATE/COUNSELOR. Finally, this researcher provides, parenthetically, a role descriptor for the type of attorney role that seemingly is represented by the interaction (i.e. a SUBORDINATE/ADVOCATE interaction is termed "The Point Man").

It is emphasized that there are numerous variations for placing specific cases on the typology. The strength of each interaction determines the placement of the case on the continua. To illustrate,

suppose that one attorney operates highly independently as an advocate while another attorney operates moderately independently as an advocate. The former of these two cases would appear farther to the right top corner of the TYPE IV SITUATION than the latter.

Limitations of the typology are immediately evident. The model lacks scaling, validation, supporting instrumentation, and involves highly inferential judgements. As a newly conceived concept, these limitations are presumed to be secondary for the moment, so that the basic idea can be formulated for purposes of this paper.

What are some speculative qualities and characteristics represented by the typology? An explanation follows:

1. TYPE I SITUATION: The attorney is characterized as relatively independent and as serving in a counselor capacity. It is presumed that the attorney would be freer to choose his or her tasks so long as they fall within the in-house, law department-type confines. It would appear that the attorney would be a problem-solver, probably actively pursuing "preventive law" for the organization. One expects that such an attorney would have access to many persons within the organization and would be accessible to others. This role closely resembles that of an "ombudsman," thus the label.

2. TYPE II SITUATION: The attorney functions in a very narrowly defined set of circumstances. The reference group and tasks are in-house and mostly organizational. The attorney is placed in a relatively subordinate position to the administrator. This situation is a clear representation of the staff person in the bureaucratic theory. This researcher chooses to characterize this attorney as "the company man."

3. TYPE III SITUATION: Here the attorney is subordinate to the

administrator but functions in an advocacy capacity. This researcher infers from the literature that such a relationship has high incongruity and would probably lead to role conflict if sustained. Some intra-organizational and interpersonal conflict can also be presumed. Examples of this role might include the attorney who represents his organization in court on a matter of vital interest to the administrator, who performs lobbying activities, or who participates in negotiations processes. This researcher visualizes the attorney being placed at the forefront, representing the organization's vital interests and serving as its visible representative. The metaphoric analogy to a combat patrol generates a characterization of the attorney as "the point man."

4. TYPE IV SITUATION: This role seems very non-traditional and unlikely in most organizations. What appears to be an individualistic role would probably be possible only in largely open-systems-type organizations, tolerant of unorthodoxy, and with rather a unique organizational climate. The interaction identifies an advocate role that allows for independence. It is unknown whether this role could be sustained in any organization. The role is most readily identifiable in public interest organizations, but even there has a temporal dimension. This researcher equates this role with activists for public policy causes, labeling such an attorney as "the muckraker."

What this typology develops is a means to study organizational attorneys. The typology is useful in the study of attorneys employed by higher education institutions as well.

The University Attorney Literature Findings Positioned on the Typological Scale

This paper contains a specific review of the literature that

pertains to university attorneys. Only nine articles are readily identifiable to this researcher (see Kaplin,1978:xiii). Using a content analysis technique, this researcher attempts to identify indicators in each of these articles that characterize the article findings on the conceptual typology scales. It is stipulated that this method involves highly inferential judgements by the researcher. A figural and conceptual array of the article findings appears in FIGURE 2.

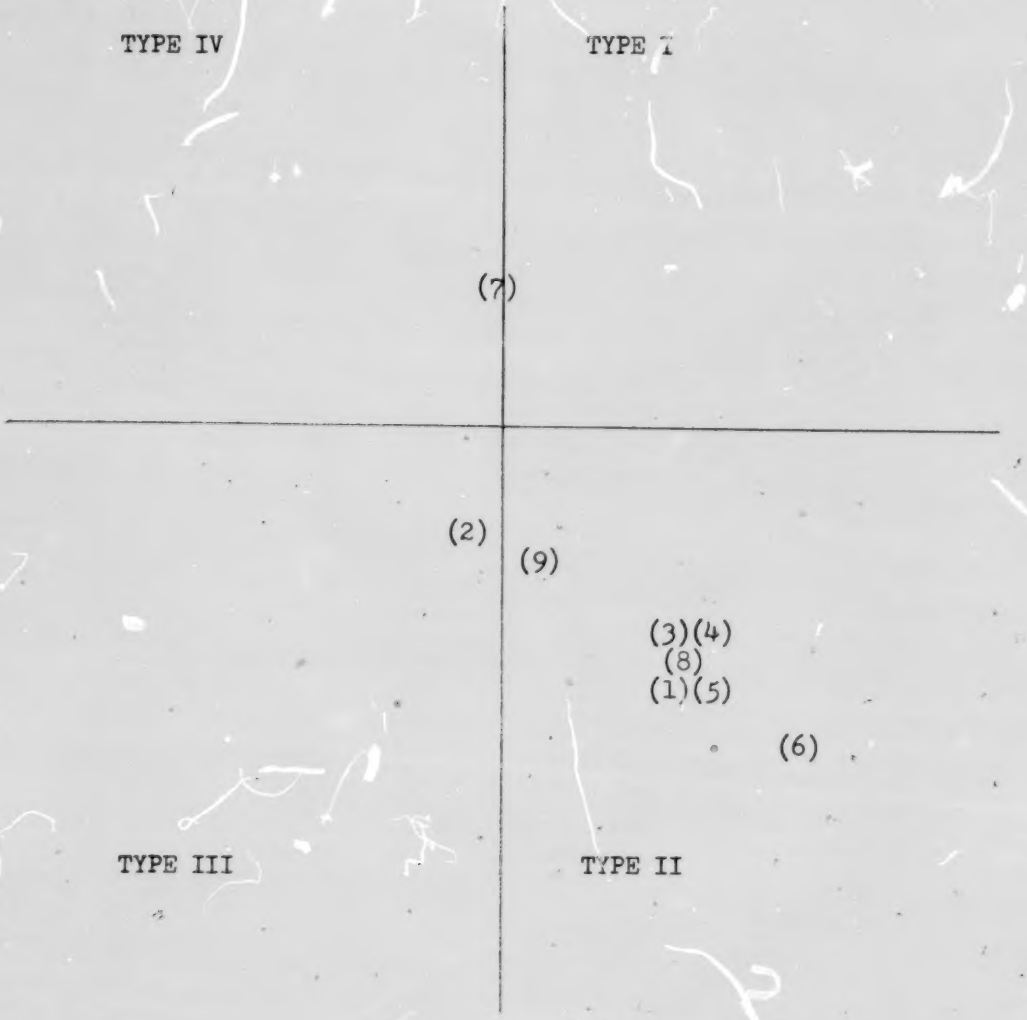
FIGURE 1

POSSIBLE DISTRIBUTIONS OF ORGANIZATIONAL ATTORNEYS

IN TERMS OF ROLE AND ADMINISTRATIVE RELATIONSHIP

FIGURE 2

KEY LITERATURE FINDINGS POSITIONED
ON THE TYPOLOGICAL SCALE



LEGEND:
(1) BEALE (1974)
(2) BICKEL(1974)
(3) CORBALLY(1974)
(4) EPSTEIN(1974)
(5) HOPKINS & ROHA(1975)
(6) LATHI(1976)
(7) ORENTLICHER(1975)
(8) ROSENBLUM(1976)
(9) SENSENBRENNER(1974)

CONCLUSIONS AND RECOMMENDATIONS

It is almost an overworked cliche for a researcher to state that his or her area of study is in need of further research. In line with the stated purposes of this study, it seems proper to say that this cliche is appropriate to the matters of the role and function of the university attorney. With the paucity of writing on the subject, this researcher is convinced that the study of the university attorney is a ripe area for inquiry. If for no other reason than to generate commentary and an alternative perspective for viewing a role that has been dealt with in rather a sterile manner in the literature, a conceptual typology has been presented.

The role, function, future, and alternatives for legal services in higher education administration are extremely complex subjects, involving many variables. This paper attempts to raise some of the questions regarding the subject, but many are left unanswered. This researcher suggests that the following areas deserve serious investigation:

1. Social scientist and legal scholar Nagel (1969) cites numerous approaches for researching the behavioral science aspects that occur in the processes of law. Using descriptive, experimental, and quasi-experimental methods, he provides prototypic means with which to better understand such things as optimizing legal policy (1969:360), analysis of the predictable disparities of victory among attorneys in litigation (1969:113), and numerous other matters for study. Work by Abel (1979:1-52) dealing with alternative legal delivery systems and their accompanying social impacts, and the findings of Berk and

Oppenheim (1979:123-146) on advocacy proceedings, are illustrative of the types of quantitative research that need to be done with concern for a better understanding of the university attorney and his or her operating environment.

2. Other studies of the university attorney are needed so that one may eventually be spared the comparative and extrapolative processes or methodology that must be used in studying the university attorney. Is the university attorney a unique type? Unfortunately, little is known about him or her. Presently, one is bound to study the university attorney in the context of some of the characteristics of attorneys in private practice, in corporations, and in government agencies. Little has been done to crystallize the boundaries of the role, specifically in which there are congruences and discontinuities between these professional legal specializations and the university attorney.

3. Another area for inquiry might be a series of studies of the behavioral science variables in organizational theory. There is a great deal of literature on line, staff, and overhead personnel and their resultant interactions, conflicts, and other behaviors in organizations (see Simon, Smithburg, and Thompson, 1962:282-285; Etzioni, 1964:76; Thompson, 1961:25-55). Perhaps a better understanding of the university attorney, vis-a-vis the organizational behavior of higher education institutions, is needed.

4. Some writers are concerned with the process of administrative decision-making and problem-solving using computational techniques, judgemental methods, and the integration of the two (see Kast and

Rosenzweig, 1974:431). The intervention of the variables of access and input from an attorney into the decision-making and problem-solving arena is largely unexamined.

5. A social psychological approach to the study of alternative operating styles, role theory, and administrative behavior for university attorneys is lacking. There is much potential for analysis of variable delivery systems of legal services in a university setting. As writers speculate on futuristic styles for universities and on post-industrial era higher education policies, it seems essential that someone speculate on administrative support systems and their subsystems in equally as expensive a manner.

There are numerous variations of the research needs. It is hoped that some success has been achieved with this paper in emphasizing that the study of the university attorney remains largely an unexplored area of inquiry.

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